

**Supplemental Letter of Findings: 01-20190271
Individual Income Tax
For the Year 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Indiana Individual failed to meet his burden of establishing that an assessment of income tax - intended to recover an erroneous refund of tax previously issued to Indiana Individual - should be abated; the Department acted on its responsibility to recover the erroneous refund and assess the appropriate amount of tax interest and penalty.

I. Individual Income Tax - Proposed Assessment.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); IC § 6-8.1-5-2(g); IC § 6-8.1-10-1(a); IC § 6-8.1-10-2.1(a)(2); I.R.C. § 62; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department erred in assessing him 2015 individual income tax on the ground that any error made in filing his original return and issuing him a refund was attributable to the Department.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who files Indiana income tax returns. Taxpayer filed a 2015 Indiana return postmarked January 2018.

The Indiana Department of Revenue ("Department") issued Taxpayer a refund of approximately \$1,200 representing 2015 taxes withheld on his behalf. The \$1,200 refund was issued March 2018.

Taxpayer submitted another 2015 return postmarked May 2018. That return indicated that Taxpayer owed approximately \$1,200 in state and county income tax.

The Department issued Taxpayer an approximately \$1,400 notice of proposed assessment. The \$1,400 represented the amount of 2015 tax due along with penalty and interest.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for the protest. A Letter of Findings was issued February 2019 disagreeing with Taxpayer's argument that the 2015 tax, penalty, and interest should be abated. Taxpayer disagreed with the Letter of Findings' conclusion and requested a rehearing.

The rehearing request was granted, and this Supplemental Letter of Findings results.

I. Individual Income Tax - Proposed Assessment.

DISCUSSION

The issue is whether Taxpayer is entitled to an abatement of the proposed assessment of 2015 income tax, penalty, and interest.

As a threshold issue, it is the Taxpayer's responsibility to establish that the interest, penalty, and tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests

with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Thus, any taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. In computing what is considered a taxpayer's Indiana income tax, IC § 6-3-1-3.5(a) refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) states that - with certain modifications specific to Indiana law - I.R.C. § 62 defines "adjusted gross income" for Indiana taxpayers.

IC § 6-8.1-5-2(g) provides the Department authority to recover refunds which have been erroneously issued. The statute provides in part, "If any part of a listed tax has been erroneously refunded by the department, the erroneous refund may be recovered through the assessment procedures established in this chapter."

In addition, IC § 6-8.1-10-1(a) imposes an interest charge if a person fails to pay the correct amount of tax. That provision states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

Finally, IC § 6-8.1-10-2.1(a)(2) imposes a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

In this particular instance, Taxpayer states that he originally believed that he had no income taxable in Indiana because he had been told by two fellow employees that - as a state of Indiana employee - his income was not subject to Indiana's income tax. In addition, Taxpayer states that his May 2018 return was correct, that he never asked for the March 2018 refund, and the Department was responsible for any errors in calculating his tax and issuing the erroneous refund.

Taxpayer asks that the pending assessment be abated because it was the Department's own error in accepting the original return which eventually led to the current disputed assessment. As Taxpayer explains, "If things would have been handled and processed correctly the first time I mailed [the return] in, I would not be having this financial problem at this time."

The Department is unable to agree that Taxpayer has met his burden of establishing that the assessment was "wrong" and should now be abated. Taxpayer has presented no statutory authority for his original position that state employees are not subject to Indiana's individual income tax. Taxpayer's original misunderstanding - that state of Indiana employees are exempt from the state's income tax regime - may have triggered the original refund, but that does not necessarily mean that the state is left without remedy. In this case, IC § 6-8.1-5-2(g) plainly gives the Department authority to recoup refunds which were issued in error, IC § 6-8.1-10-1(a) imposes interest charges on unremitted taxes, and IC § 6-8.1-10-2.1(a)(2) imposes a penalty if a taxpayer has not paid tax on or before the due date of the return.

In this case, the Department did what is required to do. Whatever errors transpired in the treatment of Taxpayer's returns, there can be no disagreement that Taxpayer owed approximately \$1,200 in state and county tax. The Department must respectfully disagree with Taxpayer's assertion that the 2015 tax, penalty, and interest must now be eliminated.

FINDING

Taxpayer's protest is respectfully denied.

May 3, 2019

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